Supreme Court, U.S.
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No. 00-732

IN THE

Supreme Court of the United States

BETHANY YOUNG,

Petitioner,

v.

CITY OF SULPHUR, LOUISIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

JOEL P. BABINEAUX
Counsel of Record
GREGORY K. MOROUX
ONEBANE, BERNARD, TORIAN, DIAZ,
MCNAMARA & ABELL (A.P.L.C.)
Attorneys for Respondent
Post Office Box 3507
Lafayette, Louisiana 70502
(337) 237-2660

164410

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	Page
Table of Cited Authorities	ii
Introduction	1
Organization Of The Brief	1
Procedural History	1
Background Facts: A Brief Review Of Bethany Young's Employment	2
Reasons For Denying The Writ: A Substantive Legal Analysis	4
Response To Background Facts Of Applicant: A Point By Point Critique	11
Conclusion	18

TABLE OF CITED AUTHORITIES

Page

Cases:

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) 5

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000) ..... *passim*

St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993) 5, 6, 7

Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981) 5, 11

Statute:

42 U.S.C. § 2000 1

Rule:

Federal Rules of Civil Procedure Rule 56 ..... 1, 2, 4, 12

INTRODUCTION

This is the Brief in Opposition by the City of Sulphur, Louisiana, to the application by Ms. Bethany Young for a Writ of Certiorari to this Honorable Court. The District Court entered a F.R.C.P. Rule 56 dismissal and the United States Court of Appeals for the Fifth Circuit affirmed. Ms. Bethany Young has applied for a Writ of Certiorari to this Honorable Court for a review of the issues of the case.

ORGANIZATION OF THE BRIEF

This opposition of the City of Sulphur, Louisiana (the "City") is organized in the following fashion. The City first presents a brief procedural history which is followed by a recitation of the background facts. The City then presents a legal analysis supporting denial of the Writ Application. The City next sets forth a reply to the background facts presented by the applicant on a point by point refutation and analysis of the assertions made by the applicant in the background facts section in her Writ Application to this Honorable Court. Finally, the City provides a brief conclusion which contains a summary of the reasons supporting denial of Ms. Young's Writ Application.

PROCEDURAL HISTORY

Ms. Bethany Young filed this action against the City, and its police department, alleging that the City terminated her employment in violation of Title VII, 42 U.S.C. § 2000. The City filed a F.R.C.P. Rule 56 motion within the deadlines set by the District Court. On March 15, 2000, the District Court dismissed the case under F.R.C.P. Rule 56, with reasons assigned. Ms. Young took an appeal to the United

States Court of Appeals for the Fifth Circuit, citing *Reeves* in her reply brief to the court. The Fifth Circuit affirmed the District Court's summary dismissal of Ms. Young's claims. Ms. Young now seeks a Writ of Certiorari to this Honorable Court.

BACKGROUND FACTS: A BRIEF REVIEW OF BETHANY YOUNG'S EMPLOYMENT

Ms. Bethany Young presented background facts in her Writ Application to this Honorable Court. She failed to cite certain salient facts favorable to the City, and supported by the record of this case on appeal to the Fifth Circuit, and the undisputed facts supplied in support of the F.R.C.P. Rule 56 motion to the District Court. Other facts cited by Ms. Young in her application are not in the record at all.

The City of Sulphur maintains a policy of equal employment opportunity. It also maintains a policy of anti-discrimination and an internal grievance procedure. Ms. Young made no complaints to the City nor any of its representatives regarding any allegations of gender discrimination. She did not invoke the grievance procedures of the City regarding any allegations of gender discrimination or any other allegations whatsoever. Two weeks before she was terminated, Ms. Young was given and took the opportunity to speak to her superiors outside the chain of command about her problems in the department and as a special accommodation to her. Ms. Young requested and received further "ride along" training as a further concession to her. She testified that she, when given the opportunity, did not make complaints to the department about which she complains here.

Ms. Young complains that: (1) she was not properly trained, particularly in firearms, (2) requested further ride

along training, and (3) was provided an outdated policies and procedures manual. There is absolutely no evidence that the other officers, including male officers, received these things when she did not. On the training issue, she claims here that she was not provided training in firearms. Yet, she testified under oath that she told the department she knows how to operate a firearm. These positions are inconsistent.

Ms. Young has no personal knowledge whether gender was a factor in the terms and conditions of her employment with the City. She admittedly has no evidence, documentary or otherwise, of gender discrimination. Ms. Young was unable to provide any policies of the City that were violated by any of its members or her superiors. She acknowledged under oath and agreed that her employment with the City was "at will" and could be terminated by either party at any time, without cause and for any reason. She also acknowledged under oath and agreed that her employment with the City was contingent upon successfully completing a 90 day probationary period. Ms. Young was employed by the City for 89 days until her termination arising from numerous and serious violations of police department policy and her unsatisfactory performance during the probationary period. She violated police department policy: (1) by mishandling evidence, (2) by her failure to properly secure an abandoned vehicle, and (3) by falling asleep at the wheel of a police car at the intersection of a major highway with the engine running and the transmission in gear. She agreed under oath that she violated police department policy for falling asleep at the wheel of a police car under the described conditions, but failed to explain that she was sick, as she now does in the Writ Application. Ms. Young was further reprimanded for calling for back up from the sheriff's department before calling for back up from her fellow officers with the City.

She testified and agreed under oath that she knew about and understood the 90 day probationary period. She agreed that it was to determine if she could perform the duties of a police officer, and that she could be terminated for any reason. Ms. Young further testified that this was explained to her by Captain Keith Andrus, the same person that hired and then fired her.

Ms. Young further testified that she read and understood the policies and procedures of the police department. She agreed to them, including the proper handling of evidence, and testified that she violated these policies and procedures. In short, the District Court states it cogently when it ruled that "not only did Young fail to do her job of protecting the people of Sulphur, but she endangered the safety of the people of Sulphur."

All of the above facts are well documented and in the record of this case and were cited as undisputed facts in support of the F.R.C.P. Rule 56 motion and heavily supported by references to the supporting documentation to the F.R.C.P. Rule 56 motion and memorandum.

REASONS FOR DENYING THE WRIT: A SUBSTANTIVE LEGAL ANALYSIS

This Honorable Court has set standards and legal principles for a trial court to utilize in adjudicating a motion for summary judgment and in the context of employment discrimination cases. The Court has also formed and developed the burden of proof structure and applicable legal analysis through a series of cases including the most recent decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000).

From *McDonnell Douglas*[1] to *Burdine*[2] and *St. Mary's*[3] to *Reeves, supra*, this Honorable Court has developed a foundation to guide trial courts and appellate courts in their handling and review of specific cases.

Obviously, a "magic formula" cannot be developed or rotely applied and this Honorable Court has not issued or mandated inflexible absolutes. The dynamics of each case and the specifics of each trial and appellate record necessitate the entrustment of dispositive motion adjudication to the judges before whom the litigants appear. As recognized by this Honorable Court:

> Whether judgment as a matter of law is appropriate in any particular case will depend on a number of factors. Those include the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law.

Reeves at 2109.[4]

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1. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

2. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

3. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993).

4. The case at bar is presented in the context of a motion for summary judgment and the *Reeves* case is in the context of a motion for judgment as a matter of law. This Honorable Court, however, has recognized that the standards for granting each respective motion and the standards for review are analogous. *See Reeves* at 2110.

As such, the focus of any appellate review is not the legal terminology used by the trial judge in authoring his written ruling, but instead the factual record developed by the parties and the court and the legal analysis and frame-work applied under the guiding standards of proof and review.

In the present case, the District Court was presented with a Motion for Summary Judgment that was primarily supported by Ms. Young's own deposition testimony. A full and complete record was developed through deposition testimony of various fact witnesses and the parties established undisputed material facts.

With the material facts in hand, the District Court first addressed the plaintiff's establishment of a prima facie case and the defendant's assertion of legitimate, non-discriminatory reasons for employment termination. *See* Young's Pet. for Writ of Cert., App. "B" at 5-7. In this analysis and after finding Ms. Young had stated a prima facie case, the trial judge correctly recognized that the City articulated three (3) non-discriminatory reasons for termination.[5] At that point, the first two steps of the analysis were completed by the trial judge. In that second step (the City's burden of articulating non-discriminatory reasons), the City's burden was clearly met by expression of the three (3) reasons for termination. As stated by this Honorable Court, "[t]his burden is one of production, not persuasion . . ." *Reeves* at 2106 (citing *St.*

5. As expressed by the District Court: "Defendant articulates three (3) distinct reasons for the termination. First, Young fell asleep in a patrol car, at a busy intersection, with the engine running, and the transmission in gear. Second, she was cited for failure to secure a vehicle of an arrestee. Finally, she was cited for mishandling evidence." *See* Young's Pet. for Writ of Cert., App. "B" at 6.

Mary's Honor Ctr., 509 U.S. at 506). Thus, the trial court satisfied the intermediary evidentiary burdens and, at that point, turned its analysis to the ultimate issue of the plaintiff's burden of proving pretext and unlawful discrimination.

The trial judge methodically analyzed the facts developed through the Motion for Summary Judgment record. In reviewing the facts in a light most favorable to Ms. Young, the trial judge considered the disputed facts asserted by her and determined which material facts were undisputed. The trial judge also critically tested the termination reasons advanced by the City. In this analysis, the District Court states:

> Young argues that she fell asleep because she was sick, on medication, and it was an overnight shift. She went to work because she understood Captain English to say that people shouldn't miss work because they were sick. Young denies the allegation that she failed to secure the vehicle. No explanation is given for the mishandling of evidence by plaintiff.
>
> Since Young does not appear to contest the mishandling of evidence, this provides a legitimate non-discriminatory reason for terminating the plaintiff. Additionally, even though plaintiff is disputing the first two reasons as pretext for gender discrimination, Young fails to provide any evidence that the termination was *because of* her gender. The mere fact that she might have been wrongly terminated is not

> enough. Young must present evidence that she was wrongly terminated *because of* her gender.
>
> In fact, Young, herself, provides a non-gender based reason why Captain English did not like her. In her deposition Young stated that Captain English did not like her because he did not like her spouse, Donald DeLouche, who worked for the Sheriff's Department. Even if Captain English managed to get Young terminated, Young admits that Captain English's dislike of plaintiff stems from whom her spouse was, not the plaintiff's gender.

See Young's Pet. for Writ of Cert., App. "B" at 6-7.

Not only did the District Court find that one of the articulated reasons was not disputed by Ms. Young in the Motion for Summary Judgment evidence and record, but Ms. Young, herself, provided a non-discriminatory reason or motivation for the alleged employment actions of the person she labels as the "protagonist."[6]

The trial judge's written ruling and analysis (based on the actual record and evidence) clearly demonstrate that facts favorable to Ms. Young were considered and that appropriate inferences were afforded in her favor. The District Court does not use or even cite a "pretext plus" standard and there is simply no indication from the District Court's factual and

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6. Ms. Young, in her brief, labels Captain English as the "protagonist." It is undisputed, however, that Ms. Young was hired by and fired by Captain Keith Andrus. Captain Andrus, as the second highest ranking officer under the Chief of Police, is the person who makes hiring and termination decisions.

legal analysis that it did not effectuate the spirit and rationale behind the applicable burden of proof and standard of review.[7]

The City submits that Ms. Young failed to carry her burden of proving pretext. Even if she did and even if certain inferences yield in her favor, the analysis and inquiry do not end there. As stated by this Honorable Court:

> This is not to say that such a showing by the plaintiff will *always* be adequate to sustain a jury's finding of liability. Certainly there will be instances where, although the plaintiff has established a prima facie case and set forth sufficient evidence to reject the defendant's explanation, no rational fact finder could conclude that the action was discriminatory. For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, non-discriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred . . . To hold otherwise would be effectively to insulate an entire category of employment discrimination

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7. Although *Reeves* was decided after the trial court's ruling in the case at bar, the ruling is nevertheless "*Reeves* compliant" in light of the factual and legal determinations made by the court. Moreover, the United States Court of Appeals for the Fifth Circuit had the benefit of the *Reeves* case when it affirmed the granting of summary judgment and there is absolutely no indication that it did not follow or refused to follow the applicable standards established by this Honorable Court.

> cases from review under Rule 50, and we have reiterated that trial courts should not "treat discrimination differently from other ultimate questions of fact" . . .

Reeves at 2109 (citations omitted).

In the present case, Ms. Young did not dispute one of the articulated reasons for termination (mishandling evidence). Although she attempts to explain another reason (falling asleep at the wheel of a patrol car with the engine running, in gear and at an intersection), such "explanation" can be rejected since it does not excuse the endangerment that she created to the public for whom she was entrusted to serve and since it did not involve any gender bias. Finally, Ms. Young provided the District Court with a gender neutral reason related to motivation. In this regard, the District Court noted:

> Assuming that Captain English did say the things alleged and had her terminated for the two false reasons, there is just not any proof that he did these things *because of* her gender. He might have disliked her, but termination for dislike is not a cause of action. Unless he disliked her and fired her *because* she was a woman. Therefore, because no evidence has been presented to raise a question of fact, this court shall grant the defendant's Motion for Summary Judgment. (Footnotes Omitted).

Young's Pet. for Writ of Cert., App. "B" at 7-6.

Based on the foregoing, it is clear that the court considered numerous factors in its analysis and that it utilized

a proper and sound methodology in its ruling and decision. As established by this Honorable Court, the ultimate question is whether or not a plaintiff's termination was the result of intentional discrimination. *Reeves* at 2106 (citing *Burdine*, 450 U.S. at 252-53). The District Court, as affirmed by the Court of Appeals, correctly found that Ms. Young did not demonstrate that any asserted pre-textual reasons were intended to mask gender discrimination. Ms. Young simply failed to produce any evidence upon which a reasonable trier of fact could base a conclusion that gender was a determinative factor in the City's decision to fire her. After a thorough and comprehensive review of the record and deposition testimony, the trial court captured the essence of this case by stating, in Footnote 4 of its Memorandum Ruling, as follows:[8]

> Although plaintiff may argue that the reason for Young's dismissal is a question of fact, in this case this is not true. Young only *alleges* discrimination. No real *evidence* has been presented to raise a question of fact.

RESPONSE TO BACKGROUND FACTS OF APPLICANT: A POINT BY POINT CRITIQUE

The recitation by the applicant of background facts is, in places, not supported by the record on appeal. In other places the background facts section of the application contains argument and not facts. The purpose of this section is to address many of the factual points raised by Bethany Young in her Writ Application.

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8. Young's Petition for Writ of Certiorari, App. "B" at p. 7, footnote 4.

Bethany Young suggests that the F.R.C.P. Rule 56 Motion was filed at the eleventh hour before trial. The record will support that the motion was filed within the dispositive motion deadline and after the taking of numerous depositions. The motion included references and submitted copies of Ms. Young's own words under oath, most of which supports the motion and the ultimate dismissal by the District Court. That testimony is in the record of this case, and constitutes the fundamental basis for the granting of the F.R.C.P. Rule 56 dismissal by the District Court. The District Court heavily relied on Ms. Young's testimony in it written reasons.

While all of Ms. Young's aspirations and reported background and experience in law enforcement are laudable and admirable, there are other aspects of law enforcement for which she, despite good intentions, could not fulfill and which are unrelated to gender. None of the reasons given for her termination are gender based and all of the employment actions by the city were gender neutral. Young refers to other job offers from other law enforcement agencies but the record does not support that assertion.

Young, with suspicion, questions her termination having been made on the second to last day of her 90 day probationary period. She suggests that the termination was hurriedly made to deny her Civil Service protections and to sweep her out of the department without vesting her with such protections. Her probationary period was 90 days, a fact she well knows. Giving her all benefit of the doubt, Bethany Young was given the entire probationary period to demonstrate her ability as a rookie law enforcement officer despite the succession of violations for which each one could have resulted in immediate termination. Each violation posed a risk to the general public or members of the department.

Yet, the City gave her all benefit of the doubt by refraining from firing her until the confluence of violations made it clear to the person that hired her that she should not be a police officer. Arguably, Bethany Young was given more consideration than a male officer would have received under the same or similar circumstances.

Ms. Young complains that the 89 day period was "tumultuous." If it was full of tumult, it was because of her own actions or inactions and not to clandestinely undermine her career because she is female. She did not follow procedure, she violated the very rules she read and understood, she spent an excessive amount of time with officers from another agency, she left a weapon exposed to open access, she fell asleep in a squad car on duty with the engine running and transmission in gear, she called for backup from another agency without first calling for her own department and outside of police protocol and she continually demanded treatment no other officer was getting. Bethany Young appears to erroneously argue that she was discriminated against because she did not receive preferential treatment.

Ms. Young's husband was a long time detective with the Calcasieu Parish Sheriff's Department and her continual desire for preferential treatment can be explained with this fact alone. She agreed that her training was the same as the men and she also received more training (beyond what others routinely receive) upon request as exemplified by the granting of additional "ride along" training.

Ms. Young argues that the officers could not speak the words they wanted to speak. Even if true, this is not evidence of discrimination. In fact, it demonstrates professionalism and courtesy by them and awareness of their demeanor and

that she complains she was placed in a unit by herself and that she was assigned graveyard shifts. These were not all the time, by her own admission, and are all part of a rookie officer's duty. It is apparent from these complaints that she was seeking treatment different from the others in the department. In one instance, she boasts of experience and background in law enforcement, yet in another breath she complains that she is not getting adequate training. Her factual and legal positions are not consistent and, at times, are contradictory. She places herself above others in qualifications but claims gender based discrimination when she does not get what she desires.

Bethany Young claims she was set up for failure from the moment she entered the department. This argument is specious because it ignores all other hypotheses on the probable reasons for her failure to be confirmed in her position. When it came time to perform the most basic tasks of an officer, ones described in the procedures and policy manual, she could not perform those duties to the satisfaction of the very officer who hired her. This argument is flawed because she insists that she was set up to fail, witness the fact that she did fail. This is her argument: the fact must be true because of the result. The argument ignores other facts that point to different conclusions.

Ms. Young invokes the terms of a purported consent decree arguing that the city agreed to hire women. The decree is not in the record and the casual allusion to a consent decree in a footnote raises questions about this Writ Application and the necessity to go beyond the record. If she intended to argue the consent decree, federal court rules require that she should have made it a part of the record so that this court, and other courts, can consider it among the other matters in

the record for this analysis. Bethany Young's omission on this alleged fact highlights its irrelevance and lack of foundation for the actual issues presented.

She asserts that spending time with sheriff's department personnel was an activity to "protect and serve" the public. It is argued by the City that this was an attempt by her to sidle up to those under the supervision of her husband and not for any exalted reasons expressed in this application. This is yet another reason that she was not doing well during her 90 day probationary period. Any attempt by Ms. Young to place a good face on the fact that during duty hours she made a practice to "hang out" with sheriff's department deputies is another specious argument. The fact that she made a practice to spend most of her time with sheriff's deputies, those under the direct supervision of her husband, and call them for backup was a matter discussed with her but ignored by her. This also raises questions about her fitness as an officer. She often pre-empted instructions of supervisory personnel with that of her own wishes: to spend more time with those who work for her husband outside of her department and agency.

Ms. Young alleges random acts of speech and stray remarks which do not constitute discrimination and are not indicative of discrimination. It was admitted that she was referred to as a "khaki back lover" by some of her fellow officers. Her boyfriend (now husband) was a high ranking sheriff's department official. She spent many hours on duty with sheriff's deputies. They wear khaki uniforms as opposed to the blue city police uniforms. This is a non-gender based reference attached to her by her own actions and not by the

actions of anyone else. In fact, she testified that she does not consider it to be a derogatory term.[9]

Despite Ms. Young's "factual" presentation, there is no evidence in the record that other officers were subjected to adverse treatment or were chastised for helping her to succeed. This is yet another attempt to refer to matters not of record.

Bethany Young argues in her factual background that she suffered gender based discrimination because of her relationship with her husband. She argues that it "seems" that this relationship and the adverse reaction of others is "inherently gender based." She fortifies this argument by stating that it is so in the absence of any evidence that male employees were similarly treated. There is no factual or legal assumption that the relationship is inherently gender based. The argument is that it did not happen to males, therefore it must be gender based discrimination. This argument does not make the actions of the City "inherently gender based."

Ms. Young argues that Officer Patrick Johnson was cautioned about his interest in Bethany Young. She uses this cautionary instruction to Johnson as an example of how those who sought to help her were subjected the same treatment. The alleged chastisement of Patrick Johnson is not gender based simply because he was spending too much time around a female officer. He was admonished on what her training should be and who it should come from. To suggest that this

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9. The deposition of Captain DeLouche, Young's husband, was taken. Although the deposition is not a part of this record it must be noted that DeLouche commented on the reference to his wife as a "khaki back lover." By his own admission, he was not offended by the expression.

is gender based discrimination is another specious argument. The same argument was made with the deposition of David Fontenot. This is simply not supported by the facts in the record.

Ms. Young suggests that the City kept policies and procedures hidden from her. In her deposition, however, she concedes that she read and understood the policies and procedures of the department. Captain English's telling her of his pet peeve of officers failure to show up for work caused her to come to work sick and then to fall asleep in a car which was on a busy street, engine running and transmission in gear. According to Ms. Young, this violation was the fault of Captain English, Ms. Young fails to take the responsibility for her own actions and chooses to blame this matter on others. His pet peeve applied to everyone male or female, not just to her and she was given the benefit of notice of this.

All of the reasons for Ms. Young's termination were given to her at the time of her termination. They were not an afterthought, nor a lark. The termination was after an 89 day period of violations and policy breaches. Nor was Ms. Young terminated to avert civil service protections. Her termination on the 89th day of probation was after an attempt to give her the full use of the probationary period. Had they fired her when she committed the first violation, or the second, or the third, she would no doubt complain that she was denied her chance to demonstrate her qualifications to be an officer by the use of the entire 90 day period. The first 90 days is a probationary period, a time of much scrutiny, when circumspection is the order of the day for any new employee. Ms. Young apparently felt that she was above that scrutiny.

There is no evidence in the record to suggest that Captain Phil English could not explain why he could move a car without keys. He explains that the car was moved, but cannot remember precisely how it was moved. This is yet another attempt of the plaintiff to supply facts not in the record.

The background facts suggest further facts not in the record. With regard to the argument that the same person that hired her also fired her, the Writ Application suggests that the City knew and maneuvered through case law creating certain legal presumptions and the legal analysis that a court would apply in testing the termination. No such evidence exists in the record. She further asserts that when they could not discourage her from pursuing her career, they concocted trivial reasons to fire her. This is not supported by the record either.

CONCLUSION

The City respectfully submits that Ms. Bethany Young's Petition for Writ of Certiorari should be denied. The factual determinations of the District Court are unequivocally supported by the record and the legal analysis applied by the District Court, as affirmed by the Court of Appeals for the Fifth Circuit, is substantively sound.

The City further submits that the ruling of the United States Court of Appeals for the Fifth Circuit, which affirmed the District Court's findings and conclusions, is not in conflict with decisions of other circuits on any salient matter and the United States Court of Appeals for the Fifth Circuit has not adjudicated and important critical federal question in a manner which conflicts with relevant decisions of this Honorable Court.

Moreover, Ms. Young's Writ Application reveals that she is now attempting to dispute, after the fact, factual findings made by the District Court. Such an attempt by Ms. Young should not invoke a review by this Honorable Court.

Finally, Ms. Young's apparent claim that the United States Court of Appeals for the Fifth Circuit misapplied an established rule of law is without support and her supposition about what substantive analysis was or was not applied is insufficient to warrant review by the United States Supreme Court.

In summation, the District Court developed a comprehensive factual record, it made findings of undisputed material facts and found that, in the present case, summary judgment was proper. The United States Court of Appeals for the Fifth Circuit reviewed the District Court record, considered the legal analysis and arguments of the parties (including the analysis presented by Ms. Young of the *Reeves* decision) and concluded that the District Court's ruling was factually and legally proper and correct.

Based on the foregoing, City of Sulphur, Louisiana respectfully requests that Ms. Bethany Young's Petition for Writ of Certiorari be denied.

Respectfully submitted,

JOEL P. BABINEAUX
Counsel of Record
GREGORY K. MOROUX
ONEBANE, BERNARD, TORIAN, DIAZ,
MCNAMARA & ABELL (A.P.L.C.)
Attorneys for Respondent
Post Office Box 3507
Lafayette, Louisiana 70502
(337) 237-2660